



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2004

Ms. Helen D. Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-6623

Dear Ms. Valkavich:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206426.

The Department of Community Initiatives of the City of San Antonio (the "department") received a request for access to the Parent-Child Incorporated ("PCI") eligibility forms used to declare a child eligible for the Head Start program. You contend that the requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act, chapter 552 of the Government Code, is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2).

Under the Act, a governmental body must make a good-faith effort to relate a request for information to public information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). The Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request for it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). Thus, any information to which the department does not have a right of access would not be considered "public information" under the Act.

You state that the requested eligibility information does not constitute public information because the department does not have possession of the requested information nor a right of access to it. We note that in response to this request you contacted PCI, who provided you with redacted copies of the requested information, which you have submitted to our office. Pursuant to section 552.303(c) of the Government Code, on July 26, 2004 this office sent a notice to the department via facsimile requesting that you provide further information regarding your contractual relationship with PCI. You were required to submit the necessary additional information to this office not later than the seventh calendar day after the date the notice was received. Gov't Code § 552.303(d). As of the date of this letter, we have not received your response. Consequently, you have failed to demonstrate that the department does not have a right of access to the requested information. Accordingly, we find that the requested information is subject to the Act and may only be withheld from disclosure if an exception under the Act applies.

You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The department generally raises the federal Freedom of Information Act ("FOIA"). In Open Records Decision No. 561 (1990) we noted the general rule that FOIA applies only to federal agencies and does not apply to records held by state agencies. *See* Open Records Decision No. 561 at 6 (1990); *see also* Attorney General Opinion MW-95 (1979) (concluding that neither FOIA nor the federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); Open Records Decision No. 124 (1976) (concluding fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted

under the Act when held by Texas governmental body). Accordingly, we conclude that FOIA does not apply to the requested information.

In addition to FOIA, you have cited to several provisions of the Code of Federal Regulations. Specifically you cite to sections 74.53(f), 1304.51(g), and 1304.51(h) of title 45 of the Code of Federal Regulations. After reviewing the statutory language, we conclude that these provisions relate to the general administration of the Head Start programs, and do not make information confidential. See Open Records Decision Nos. 478 at 2 (1987) (stating that as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public), 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure). Further, neither the department, nor any other entity, has cited to any specific provision of law that makes the requested information confidential. Consequently, the department may not withhold the requested information pursuant to section 552.101 in conjunction with federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We find that the identifying information of the children, including their names, addresses, phone numbers, social security numbers, and family member information, in the requested documents is protected by privacy. The remaining information that PCI has marked, including family income information and information relating to PCI personnel, is not protected and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

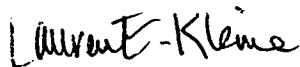
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/sdk

Ref: ID# 206426

Enc. Submitted documents

c: Mr. Roddy Stinson
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(w/o enclosures)